

AMENDED IN SENATE JUNE 24, 1999

AMENDED IN ASSEMBLY MAY 3, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 1051**

**Introduced by Assembly Member Kaloogian**

February 25, 1999

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An act to amend Sections 9053, 9100, and 9250 of, to add ~~Section~~ *Sections 104.5 and 1214* to, and to repeal Section 1218 of, the Probate Code, relating to decedent's estates.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1051, as amended, Kaloogian. Estates: claims.

(1) *Existing law governs the disposition of community and quasi-community property.*

*This bill would establish a presumption that the transfer of community and quasi-community property to a revocable trust is an agreement that those assets retain their character in aggregate for purposes of any division provided by the trust.*

(2) Existing law provides for the administration of decedents' estates and the administration of claims against an estate.

This bill would eliminate the requirement that a creditor of an estate establish that his or her attorney had no actual knowledge of the administration of the estate in order to establish liability upon the part of the personal representative for failure to notify the creditor of the administration of the estate; revise the requirements for notifying a creditor of the

allowance or rejection of his or her claim; and make technical changes.

(3) *Existing law requires a creditor who files a claim during the administration of a decedent's estate to file before the expiration of the later of either 4 months after the date letters of administration are first issued or 60 days after the date notice of administration is given to the creditor, if notice is at least 60 days prior to the expiration of a specified one-year statute of limitations.*

*This bill would delete the requirement that the notice be at least 60 days prior to the expiration of the one-year statute of limitations.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 104.5 is added to the Probate  
2 Code, to read:

3 104.5. Transfer of community and quasi-community  
4 property to a revocable trust shall be presumed to be an  
5 agreement, pursuant to Sections 100 and 101, that those  
6 assets retain their character in the aggregate for purposes  
7 of any division provided by the trust. This section shall  
8 apply to all transfers prior to, on, or after January 1, 2000.

9 SEC. 2. Section 1214 is added to the Probate Code, to  
10 read:

11 1214. If a notice or other paper is required or  
12 permitted to be mailed, delivered, served, or otherwise  
13 given to a person who is represented by an attorney of  
14 record, the notice or other paper shall also be mailed to  
15 this attorney, unless otherwise specified in a request for  
16 special notice.

17 ~~SEC. 2.~~

18 SEC. 3. Section 1218 of the Probate Code is repealed.

19 ~~SEC. 3.~~

20 SEC. 4. Section 9053 of the Probate Code is amended  
21 to read:

22 9053. (a) If the personal representative believes that  
23 notice to a particular creditor is or may be required by

1 this chapter and gives notice based on that belief, the  
2 personal representative is not liable to any person for  
3 giving the notice, whether or not required by this  
4 chapter.

5 (b) If the personal representative fails to give notice  
6 required by this chapter, the personal representative is  
7 not liable to any person for the failure, unless a creditor  
8 establishes all of the following:

9 (1) The failure was in bad faith.

10 (2) The creditor had no actual knowledge of the  
11 administration of the estate before expiration of the time  
12 for filing a claim, and payment would have been made on  
13 the creditor's claim in the course of administration if the  
14 claim had been properly filed.

15 (3) Within 16 months after letters were first issued to  
16 a general personal representative, the creditor did both  
17 of the following:

18 (A) Filed a petition requesting that the court in which  
19 the estate was administered make an order determining  
20 the liability of the personal representative under this  
21 subdivision.

22 (B) At least 30 days before the hearing on the petition,  
23 caused notice of the hearing and a copy of the petition to  
24 be served on the personal representative in the manner  
25 provided in Chapter 4 (commencing with Section 413.10)  
26 of Title 5 of Part 2 of the Code of Civil Procedure.

27 (c) Nothing in this section affects the liability of the  
28 estate, if any, for the claim of a creditor, and the personal  
29 representative is not liable for the claim to the extent it  
30 is paid out of the estate or could be paid out of the estate  
31 pursuant to Section 9103.

32 (d) A personal representative has a duty to make  
33 reasonably diligent efforts to identify reasonably  
34 ascertainable creditors of the decedent.

35 ~~SEC. 4.~~

36 *SEC. 5. Section 9100 of the Probate Code is amended*  
37 *to read:*

38 9100. (a) A creditor shall file a claim before  
39 expiration of the later of the following times:

1 (1) Four months after the date letters are first issued  
2 to a general personal representative.

3 (2) Sixty days after the date notice of administration is  
4 given to the creditor, ~~if notice is at least 60 days prior to~~  
5 ~~expiration of the time provided in Section 366.2 of the~~  
6 ~~Code of Civil Procedure~~. Nothing in this paragraph  
7 extends the time provided in Section 366.2 of the Code of  
8 Civil Procedure.

9 (b) A reference in another statute to the time for filing  
10 a claim means the time provided in paragraph (1) of  
11 subdivision (a).

12 *(c) Nothing in this section shall be interpreted to*  
13 *extend or toll any other statute of limitations or to revive*  
14 *a claim that is barred by any statute of limitations. The*  
15 *reference in this subdivision to a “statute of limitations”*  
16 *includes Section 366.2 of the Code of Civil Procedure.*

17 SEC. 6. Section 9250 of the Probate Code is amended  
18 to read:

19 9250. (a) When a claim is filed, the personal  
20 representative shall allow or reject the claim in whole or  
21 in part.

22 (b) The allowance or rejection shall be in writing. The  
23 personal representative shall file the allowance or  
24 rejection with the court clerk and give notice to the  
25 creditor as provided in Part 2 (commencing with Section  
26 1200) of Division 3, together with a copy of the allowance  
27 or rejection.

28 (c) The allowance or rejection shall contain the  
29 following information:

30 (1) The name of the creditor.

31 (2) The total amount of the claim.

32 (3) The date of issuance of letters.

33 (4) The date of the decedent’s death.

34 (5) The estimated value of the decedent’s estate.

35 (6) The amount allowed or rejected by the personal  
36 representative.

37 (7) Whether the personal representative is authorized  
38 to act under the Independent Administration of Estates  
39 Act (Part 6 (commencing with Section 10400)).

1 (8) A statement that the creditor has three months in  
2 which to act on a rejected claim.

3 (d) The Judicial Council may prescribe an allowance  
4 or rejection form, which may be part of the claim form.  
5 Use of a form prescribed by the Judicial Council is  
6 deemed to satisfy the requirements of this section.

7 (e) This section does not apply to a demand the  
8 personal representative elects to treat as a claim under  
9 Section 9154.

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